

BOARD OF APPEALS CASE NO. 4866

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BEFORE THE

APPLICANT: Belle Farm Partnership

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ZONING HEARING EXAMINER

**REQUEST: Variance to permit 5 lots on
panhandles in the Agricultural District;
Graceton Road, Parcel 52, Pylesville**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 11/4/98 & 11/11/98

HEARING DATE: January 27, 1999

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Record: 11/6/98 & 11/13/98

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ZONING HEARING EXAMINER'S DECISION

The Applicant appeared before the Hearing Examiner requesting a variance to Section 267-22(G)(4) of the Harford County Code to permit 5 lots on panhandles in the Agricultural District.

The subject property is owned by the Applicant and is identified as Parcel No. 52, in Grid 4-D, on Tax Map 10. The parcel contains 95 acres, more or less, all of which is zoned Agricultural.

Henry Heaps, a retired minister and one of the members of Belle Farm Partnership, testified. The witness stated that the Applicant is a general partnership comprised of himself and three sisters who are developing the subject property. Reverend Heaps explained that the subject property has always been farmed and has been in the Heaps family for over 100 years. He testified that given his age and the age of his siblings it is no longer feasible to continue to farm the property. He said that the family is subdividing and selling lots to pass on their family's heritage to their children and grandchildren. He explained that according to Dennis Allgeier of Morris and Ritchie Associates, Inc., the engineering firm the family has retained to assist in developing the subject property, all 5 proposed lots cannot be created without the requested variance. He testified that accordingly, denial of the variance would cause practical difficulty. He explained that granting the requested variance to enable the additional fifth lot to be created would cause no adverse impact to anyone.

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Mr. Allgeier, an expert site plan and subdivision designer employed by Morris and Ritchie Associates, Inc., next testified. Using Exhibit No. 8, Mr. Allgeier indicated that the subject property has an irregular shape and the Applicant wanted to cluster the lots together to preserve a large area for continued farming. The area where the lots are proposed is desirable for houses in that it is flat and at the property's highest elevation. He pointed out that wetlands, streams, areas reserved for afforestation, slopes and poor soil conditions would prevent the proposed lots from being developed elsewhere on the subject property.

Mr. Allgeier indicated that no access to MD Route 165 is available to the lots. Access to the lots is from MD Route 624. He said that, in theory, a public road could be built to serve the lots in lieu of the panhandle. However, he testified that it would be unreasonable to build a road to serve just 5 lots and that grade conditions would prevent such a road from being built to county road standards. He pointed out that in order to avoid the environmental impacts noted above and preserve the large farming area, the fifth lot could not be created without the requested variance.

Finally, Denis Canavan, an expert land planner testified. Mr. Canavan said that, in his opinion, due to the subject property's irregular shape, lack of access to MD Route 165, slope, poor soils, non-tidal wetlands, streams, area reserved for afforestation and the desire to continue farming operations, the subject property was unique and had topographical condition which would result in practical difficulty to the Applicant if the provisions of the Code were literally enforced in this case. He noted that without the requested variance there would be no reasonable way to provide access to the fifth lot.

The witness also stated that, in his opinion, the variance, if granted, will not be substantially detrimental to adjoining properties or materially impair and the purpose of the Code or the public interest. Mr. Canavan testified that the lots are permitted, only having 5 lots use the same panhandle makes the variance necessary. He testified that adding one lot to an area where existing single family detached lots are located will cause no impact whatsoever.

No protestants appeared in opposition to the Applicant's request.

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CONCLUSION:

The Applicant is requesting a variance from the provisions of Section 267-22(G)(4), to permit 5 lots on panhandles in the Agricultural District.

Section 267-22 (G)(4) provides:

“Groups not exceeding four lots may have two lots on panhandles in accordance with the following criteria....”

Section 267-11 of the Harford County Code permits variances, provided the Board finds:

1. By reason of the uniqueness of the property or topographical conditions the literal enforcement of this Part I would result in practical difficulty or unreasonable hardship; and
2. The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part I or the public interest.

Based on the testimony presented, the Hearing Examiner finds that the subject property is unique, given its irregular shape, topography, poor soil conditions and the presence of streams and non tidal wetlands. Granting the variance to permit the fifth lot on a panhandle would not adversely affect the adjoining property owners or the public interest, as the lot is located in an area already subdivided into residential lots. Based on the evidence there is no other reasonable means of access to the lot from MD Route 624. The fifth lot is a principal permitted use, it is only because the fifth lot utilizes the same panhandle as the other four lots that the variance is necessary.

Based on the evidence, it is the recommendation of the Hearing Examiner that the requested variance to allow 5 lots on one panhandle, as shown on the Applicant's site plan, be approved.

Date FEBRUARY 4, 1999

L. A. Hinderhofer
Zoning Hearing Examiner